

Agricultural Marketing Service, USDA

§ 29.74a

application for services shall be filed and determined in accordance with the provisions of §§ 29.3 and 29.2.

[38 FR 27599, Oct. 5, 1973]

§ 29.74 Growers' referendum.

(a) *Method of conducting.* Any referendum held as provided in section 5 of the Act shall be conducted by the Division in accordance with this section. The Director shall determine (1) the market or group of markets to be covered by a referendum; (2) when a referendum is to be held; and (3) the period during which growers, entitled to vote therein, may cast their ballots. When a referendum is held for a group of markets, the result of such referendum may be construed to apply either individually or collectively to such markets. Before holding a referendum, the Division shall establish from the records of the collectors of internal revenue for the preceding marketing season, or in the absence of such records then from such other reliable sources of information as are available, a list showing the names of all growers who are entitled to vote in the referendum, and from the list so established the eligibility of growers to vote in a referendum shall be determined by the Division: *Provided*, That if a grower, whose name appears on such lists for two or more markets selling the same class of tobacco, votes in one referendum for a market selling such type, he shall not be eligible to vote in a referendum for any other market selling such type. If no growers sold tobacco at auction on a proposed new market during the preceding marketing season, then the list of growers entitled to vote in the referendum shall be comprised of the growers residing in the county where the proposed new market is located and in the adjacent counties.

(b) *Form of ballot.* Ballots to be used for voting in a referendum held under the Act shall be in a form approved for the purpose by the Director.

(c) *Distribution of ballots.* Ballots to be used by growers in a referendum under the act may be distributed by mail or otherwise as the Director may select. The Director may establish and publish a list of voting places for the purpose of any referendum and distribute bal-

lots therefrom. When ballots are not mailed directly to growers who are entitled to vote, insofar as their addresses are known, the Director shall announce the voting places at which ballots can be secured, and copies of such announcement shall be given to the press and mailed, for posting and distribution, to the post offices of the market or group of markets covered by the referendum and to post offices in the vicinity of such markets or group of markets. Any explanatory statement with reference to a referendum, provisions of the Act and these regulations, or the operation and benefits of the services authorized by the act may be attached to or supplied with ballots.

(d) *Filing and tabulation of votes.* Each ballot, when filled in and signed by a grower entitled to vote in a referendum, shall be mailed or delivered by him as specified in the ballot. Persons authorized by the Director to receive votes in any referendum shall promptly file all votes received or collected by them with the Division. All ballots filed in a referendum shall be examined to verify the eligibility of the voter and the Director shall have compiled the result of the referendum and furnish the Secretary a statement showing whether or not two-thirds of the growers voting favored the designation of the market or group of markets covered by the referendum. In verifying votes, ballots which do not show the desire of the voter, or ballots which are defective or illegible, or ballots on which the signature or other identification does not correspond with the established list shall not be counted. The choice of any individual voter shall not be divulged by any official of the Division, except to the Secretary when requested. Votes, ballots, and other documents pertaining to a referendum shall be preserved in the Division for a period of 2 years from the closing date of such referendum, and may be destroyed thereafter.

[13 FR 9474, Dec. 31, 1948; 19 FR 57, Jan. 6, 1954, as amended at 55 FR 21738, May 29, 1990]

§ 29.74a Producer referenda on mandatory grading.

(a)(1) *Method of conducting.* Referenda shall be conducted among producers who were engaged in the production of

the following types of tobacco harvested in the immediately preceding crop year: flue-cured tobacco, types 11, 12, 13, 14; Kentucky-Tennessee fire-cured tobacco, types 22 and 23; Virginia fire-cured tobacco, type 21; Virginia sun-cured tobacco, type 37; dark air-cured tobacco, types 35 and 36; burley tobacco, type 31; and cigar filler and binder tobacco, types 42, 43, 53, 54, and 55. A referendum will be conducted for each kind of tobacco and the results will apply to each individual kind. A producer is eligible to vote in referenda for each kind of tobacco they produce.

(2) *Farmers engaged in the production of tobacco.* For purposes of the referenda, persons engaged in the production of tobacco includes any person who is entitled to share in a crop of the tobacco or the proceeds thereof because he or she shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (a landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: Provided, That any failure to harvest the crop because of conditions beyond the control of such person shall not affect his or her status as a person engaged in the production of the crop. In addition, persons engaged in the production of tobacco also includes each person who it is determined would have had an interest as a producer in the crop on a farm for which a farm allotment under the quota program (7 CFR part 723, subpart B) for the crop was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable Farm Service Agency commodity regulations of the Department of Agriculture.

(3) *One vote limitation.* Each person eligible to vote in a particular referendum shall be entitled to only one vote in such referendum regardless of the number of farms in which such person is interested or the number of communities, counties, or States in which farms are located in which farms such person is interested: Provided, That:

(i) The individual members of a partnership shall each be entitled to one

vote, but the partnership as an entity shall not be entitled to vote;

(ii) An individual eligible voter shall be entitled to one vote even though he or she is interested in an entity (including but not limited to a corporation) which entity is also eligible to vote;

(iii) A person shall also be entitled to vote in each instance of his or her capacity as a fiduciary (including but not limited to a guardian, administrator, executor or trustee) if in such fiduciary capacity he or she is eligible to vote but the person for whom he or she acts as a fiduciary shall not be eligible to vote.

(4) *Joint and family interest.* Where several persons, such as members of a family, have participated or will participate in the production of tobacco under the same lease or cropping agreement, only the person or persons who signed the lease or agreement, or agreed to an oral lease or agreement, shall be eligible to vote. Where two or more persons have produced or will produce tobacco as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise eligible. The eligibility of one spouse does not affect the eligibility of the other spouse.

(5) *Minors.* A minor shall be entitled to one vote if he or she is otherwise eligible and is 18 years of age or older when he or she votes.

(6) *Interpretation.* In the case of tobacco on a farm where no acreage of tobacco is actually planted but an acreage of the commodity is regarded as planted under applicable regulations of the Department of Agriculture, persons on the farm who it is determined would have had an interest in the commodity as a producer if an acreage of the commodity had been actually planted shall be eligible to vote in the referendum.

(b) *Referenda procedures.* See part 717 of chapter VII of this title for eligibility criteria and the procedures to be used in carrying out mandatory grading referenda. Where not inconsistent with this part, the definitions contained in parts 717, 718 and 723 of this title will govern administration of these referenda. A copy of the regulations in parts 717, 718, and 723 of this

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title, a referendum ballot, and voting procedures are available for review in any USDA Service Center.

[67 FR 9896, Mar. 5, 2002]

§ 29.75 Accessibility of tobacco.

(a) All tobacco subject to mandatory inspection shall be made readily accessible for inspection.

(b)(1) Each warehouse operator shall block off in his warehouse adequate space for each basket of flue-cured tobacco offered for sale on the auction market, and shall prominently number each 10th basket space. The blocking and numbering arrangement shall follow the order of sale; that is, down one row and back on the adjacent row.

(2) Each warehouse shall display a plainly visible sign with the total number of baskets of flue-cured tobacco allotted to be sold each day. Each warehouse operator shall designate to the inspector the number of the starting space for each day's sale and grading will begin at this designated space. All spaces, whether empty or full, shall be counted. No tobacco will be graded beyond the numbered space corresponding with the number of baskets allotted for each day's sale. The grading shall proceed from the beginning point of the sale to the closing point of the sale in an orderly sequence. An inspector shall not go back and grade any basket of tobacco placed in a space which was empty when grading for the day's sales passed such sales space.

(c) Before starting inspection of the day's sale of flue-cured tobacco in each warehouse, the head grader or market supervisor grader shall determine if there is compliance with the requirements of paragraph (b) of this section. If he determines that the prescribed system has not been followed, the inspectors shall proceed to the next scheduled warehouse and shall return to the noncomplying warehouse on the next sales day for such warehouse when the head grader or market supervisor grader shall again determine if the prescribed system has been followed before starting the inspection.

(d) A reduction in daily sales for any warehouse resulting from noncompliance with this section, including empty spaces, shall not prevent the maximum number of baskets allotted per day per

set of buyers from being sold in the market.

(e) Each receiving station operator shall make tobacco accessible to the inspector for proper examination including any necessary display in adequate light for determination of grade, class, type, or other characteristics.

[13 FR 9477, Dec. 31, 1948; 19 FR 57, Jan. 6, 1954, as amended at 28 FR 6211, June 18, 1963; 67 FR 36081, May 23, 2002]

§ 29.75a Display of burley tobacco on auction warehouse floors in designated markets.

(a)(1) Each lot of burley tobacco displayed for sale on auction warehouse floors shall have a minimum space of 24 inches from butts to butts between the rows. Distances between lots of tobacco within the row shall be no less than 8 inches between immediately adjacent lots.

(2) The number of bales on a pallet shall not exceed eight. Tobacco packed in bales shall have the stems turned toward the aisle.

(3) Each warehouse operator shall display a plainly visible sign showing the total number of lots of burley tobacco allotted to be sold each day. Such sign shall be displayed at the point of lots where the days' sales will conclude and no additional tobacco shall be graded beyond that point.

(4) Each warehouse operator shall arrange his entire day's sale in a continuous and orderly arrayed sequence of lots and rows of tobacco. Any arrangement of tobacco in rows of progressively varying lengths, or any deviations from an orderly arrayed sequence of lots and rows of tobacco, shall have prior approval of the Set Work Leader or Circuit Supervisor.

(5) Each warehouse operator shall designate to the Set Work Leader or Circuit Supervisor the starting point or lot for each day's sale, and counting and grading will begin at this designated point and proceed to the closing point of the sale in an orderly sequence. All lot spaces, containing or not containing a lot of tobacco, and all lots of tobacco, covered or uncovered, shall be counted and included in the daily sales allotment. Lots of tobacco shall not be removed, added, rearranged, or substituted between the